

Federal Parks & Recreation

Editor: James B. Coffin

Subscription Services: Celina Richardson

Volume 26 Number 2, January 25, 2008

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Commission calls for new approach in next SAFETEA law

A long-awaited report last week recommended a major shake-up of surface transportation law that would affect virtually every outdoor-related program now supported by the Highway Trust Fund.

The National Surface Transportation Policy and Revenue Study Commission would have Congress:

- * subordinate transportation enhancements to a new Environmental Stewardship Program that would receive seven percent of surface transportation program money. It is unclear from the committee's recommended formula if transportation enhancements would gain or lose,

- * continue the existing Federal Lands Highway Program with 100 percent federal money. The report does not estimate how much money the program should receive, and

- * no longer guarantee financial set-asides to recreational trails and scenic byways programs, by implication. The report would eliminate dozens of individual programs as separate entities, so rec trails and byways would presumably have to compete for money from the Environmental Stewardship Program and/or other pots of money.

The report does not lock Congress and the Department of Transportation/White House into any changes in the current surface transportation program - the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU.) The law is scheduled to expire on Sept. 30, 2009.

"We're not going to put a bill number on it and say here's our recom-

mendation," said Jim Berard, a senior aide to House Transportation Committee Chairman James Oberstar. "We probably won't write a bill until early next year (2009) and get into revenue recommendations until early next year."

But the report does provide a foundation for Congress to work off, particularly in the area of revenues. And that's where the report becomes controversial. It recommends an enormous increase in federal spending for surface transportation from \$85 billion per year now to \$225 billion when the next transportation law is written, increasing to \$340 billion per year over time.

"Any time you talk about spending on anything these days it always generates a political debate," said Berard. "I'm sure there will be a debate on spending, let alone on tax implications. This is going to take some doing."

To pay for the new law the commission recommended a 25-to-40 cents per gallon increase in the federal gasoline tax. Nine of the 12 commissioners endorsed the report.

The three dissenters, including Secretary of Transportation Mary Peters, called for maintaining the existing federal gas tax and making up new revenues through a combination of tolls, private investment and congestion pricing.

Ranking House Transportation Committee Republican John Mica (Fla.) also criticized the tax increase idea. "Unfortunately I believe the commission missed the mark in proposing an increase in a tax that is becoming more obsolete with every passing day," he said. "What's needed is a means of reliably raising revenue as we transition from gasoline to other transportation fuels to power vehicles."

Mica echoed the minority commissioners when he said he favored "bonding, creative financing and public-private partnerships" to raise needed revenues.

The majority report also recommends condensing the 108 existing surface transportation programs down to 10. Among the 10 would be Environmental Stewardship and Federal Lands.

In that it takes Congress an eternity to write major legislation such as a multi-year surface transportation bill (the last one was more than two years late), there is a very good chance the next law won't be enacted until 2010, or later. If Congress follows past practice, it will extend SAFETEA-LU.

That also suggests Congress may take years to come to grips with a mounting financial problem facing surface transportation programs. The Bush administration estimates the Highway Trust Fund, which powers SAFETEA-LU with gasoline tax revenues, will dip into the red in fiscal 2009. By the end of fiscal 2011 the administration estimates a \$10 billion deficit in the fund, although the Congressional Budget Office has put the deficit at a less daunting \$2.4 billion by then.

Park and rec programs are feeling the fiscal crisis as Congress repeatedly orders rescissions to previous SAFETEA-LU allocations to balance its books. In fiscal 2006, fiscal 2007 and again in fiscal 2008 Congress ordered states to turn back billions of dollars from previous allocations, with transportation enhancements particularly hard hit. A fiscal 2008 rescission alone calls for a return of \$3.15 billion.

SAFETEA-LU, signed into law Aug. 10, 2005, as PL 109-59, provided park and rec programs with substantial increases in spending over previous surface transportation laws, not counting rescissions.

Over five years SAFETEA-LU set aside \$24 billion for earmarks (many of them trails), \$3.3 billion for transportation enhancements, \$370 million for recreational trails, \$175 million for scenic byways, \$1.05 billion for Park Service roads, \$1.41 billion for public lands highways, \$145 million for refuge roads, \$1.86 billion for Indian Reservation roads, \$612 million for Safe Routes

to Schools, and \$96.5 million for Transit-in-the-Parks.

TRANSPORTATION ENHANCEMENTS: Doing the math, if Congress followed the commission recommendation and provided \$225 billion in surface transportation program money in fiscal 2010, the Environmental Stewardship Program would receive seven percent of that, or \$15.75 billion. Ten percent of that for enhancements would be \$1.575 billion per year. In addition states would be free to decide how to spend 60 percent of the \$15.75 billion, so enhancements would also be eligible to tap that.

FEDERAL LANDS HIGHWAYS: The commission would essentially extend the existing Federal Lands Highway Program, but would have an independent body called the National Surface Transportation Commission establish performance standards and goals. (The commission would establish standards and goals for all 10 programs.)

RECREATIONAL TRAILS/SCENIC BYWAYS: The commission would eliminate a total of 108 surface transportation programs, including 62 managed by the Federal Highway Administration and 20 by the Federal Transit Administration. Thus recreational trails and scenic byways would be eliminated as set-aside programs. Instead of the 108 surface transportation programs the commission would have Congress establish 10 programs, including Environmental Stewardship and Federal Lands.

NPS reviewing top candidates for first Centennial money

The Park Service hopes to decide next month which matching partnership projects should receive allocations from a \$25 million appropriation to kick off a Centennial Challenge program this year.

A small group of NPS employees is now identifying the projects from more than \$300 million in pledges from "friends" of the National Park System.

"Their recommendations are going

out to the regions this week and by the end of the first week of February we could have some guidance for the director," said an NPS spokesman. "It may take a little longer because we are about to roll out the budget (on February 4.)" Mary Bomar is NPS director.

Congress provided the \$25 million - to be matched by \$25 million from friends groups for a total of \$50 million - in a fiscal year 2008 appropriations law. President Bush signed the law December 26 as PL 110-161.

Congress also provided in PL 110-161 an extra \$100 million for core NPS operations, as the Bush administration requested. The core money and the Challenge money are part of an administration recommendation for a 10-year, \$3 billion campaign to upgrade the National Park System for its 100th anniversary in 2016.

While appropriators have put up the \$25 million in seed money for the Challenge program, authorizing committees are still working on legislation that would establish a permanent program. If Congress acts, it would match \$100 million per year in partnership grants with \$100 million per year in federal funds.

The House Natural Resources Committee has taken the lead in writing legislation, but it failed to complete the job in 2007. Committee chairman Nick Joe Rahall (D-W.Va.) has identified that legislation as one of his top priorities in fiscal 2008.

In laying out his agenda for this year Rahall said, "Efforts will continue to pass legislation aimed at bolstering the budget of the National Park Service, approaching its 100th year, in order to allow the Park Service to effectively implement its mission and serve the needs of the American people."

Three different Centennial Challenge proposals are before the committee. An initial bill from the Interior Department (S 1253, HR 2959) would pay for the program with \$100 million per year in off-budget federal money matched

by up to \$100 million per year in contributions from nonfederal partners.

Rahall and subcommittee on National Parks chairman Raúl Grijalva (D-Ariz.) introduced a second bill, HR 3094, that would finance the program from up to \$100 million per year in fees charged by Interior Department agencies to commercial users and lessees of federal lands. Rahall and Grijalva did not address partner contributions. A third bill is a variation on HR 3094 and was developed by House Democratic staff members based on recommendations from a broad alliance of interest groups operating as the National Park Centennial Network.

Until that legislation is completed appropriations bill language will guide prioritization. The pertinent language says the \$25 million Challenge money is not to be used for core operations, is not to be used for projects that commercialize the parks, and the Park Service must control the projects.

Said the NPS spokesman of prioritization of the Challenge projects, "They have to be projects that are eligible. They have to be projects that can be done in this fiscal year and they must be projects where partner money is available."

California may shutter nearly 20 percent of its parks

The California state park system, one of the largest in the nation, would have to close in whole or in part 48 units under Gov. Arnold Schwarzenegger's (R) fiscal year 2008-2009 budget request.

If the California state legislature goes along with Schwarzenegger, the state would also have to eliminate 136 positions in the park system when the next fiscal year begins in July.

The cutbacks would mark a long trend in California of decreased allocations from the legislature's general fund. That decrease, however, has been partially offset by increased fees and

other sources of revenues for the parks.

"Basically, there has been a trend for the last 10 years of the general fund going down and fees going up," said a California State Parks spokesman. "We're concerned when that happens that we are going to price parks out of people's ability to pay."

The cutbacks will affect visitation, even without the increase in fees, according to the state. "State Parks has more than 75 million visitors every year, said the state parks office. "These park closures are projected to reduce the annual visitation by about 6.5 million visitors or less than 10 percent of our total attendance, meaning most of the system, 230 of the 278 state parks, will remain open and operational."

Schwarzenegger isn't picking on parks. Because of a massive state deficit he is asking the state legislature to apply a 10 percent across-the-board reduction to all programs.

California State Parks determined that it would have to close parks to obtain the magnitude of savings that Schwarzenegger was demanding. "It must be noted that it is not possible to just reduce the hours of parks or close parks for a day or two each week to solve the funding problem," said the parks office in a briefing paper that describes the cutbacks. "It is people that keep parks open and it is funding for people, the largest section of the State Parks budget that would be eliminated."

To determine which units to close California State Parks applied several screens. First, it determined which units could be closed. Some, such as the Sonoma Coast State Park, have multiple entrances and couldn't be effectively closed down.

Second, it determined how many people used the unit. The lower the attendance the better the candidate for closure. And third, it determined revenues generated. The lower the revenues the better the candidate for closure.

The California State Parks spokesman said the agency's revenues from the general fund decreased from \$175 million in fiscal 2006-07 to \$161 million in 2007-08 to a projected \$150 million in fiscal 2008-09.

Put another way the state spent \$4.16 per visitor to state parks in 1990-91 and, if Schwarzenegger gets his way, would spend \$2.80 per visitor in 2008-09.

Alexander faces tough call on when to begin new PCAO

Sen. Lamar Alexander (R-Tenn.) is being asked to take a political risk and introduce legislation this year to establish a new national outdoor recreation commission.

That may offend some conservation groups that are hostile to President Bush who would prefer that Alexander wait until a new President begins work early next year. But a broad range of recreation interests wants to get a move on now.

Alexander is caught in the middle and is considering his options. "At this time, we are not yet certain when a Third Commission would begin," said Lee Pitts, press secretary to Alexander.

"We are currently in the process of doing some preliminary planning and research to decide if the timing is truly right to call on the President for a Third Commission on the Great Outdoors."

Pitts added, "If our planning and research show that all the right pieces are in place for such a commission, it probably would not convene until the latter part of this year or possibly in 2009."

The precise date when the commission begins its work could matter. If Congress passed legislation this year, it could limit the political influence of the administration by allowing both President Bush and the Democratic Congress to choose commission members.

Or the research could begin now

under President Bush and the commission could actually begin formal sessions under the next President. "We would urge quick action in two phases," said Derrick Crandall, president of the American Recreation Coalition. "This year we could begin to conduct surveys and data and early 2009 form a commission."

One leading conservationist, Alan Front, senior vice president for the Trust for Public Lands, does not object to beginning work now. "You can always play games with the calendar," he said. "But I don't think it's ever a bad time to take on the issue." He noted that Alexander chaired the last such commission during the Reagan administration, which was not known for its sympathy to conservation programs.

In a Senate floor speech on March 29, 2007, Alexander laid out his desire to introduce legislation to establish a new national outdoor commission. His original plan was to wait until the next President was elected and begin work in 2009 on a bill. But by the time a new commission was formed and completed its work the next administration would almost be over, depriving the President of implementing the recommendations of his own commission.

When Alexander chaired the President's Commission on Americans Outdoors (PCAO) in the mid 1980s as then-governor of Tennessee, that panel recommended dozens of major strategies to revive park and rec programs. Perhaps most noteworthy the commission recommended in 1987 a \$1 billion trust fund to guarantee money for the Land and Water Conservation Fund.

Crandall, who was one of the PCAO commissioners, said an alliance of recreation interests called Partners Outdoors has been meeting periodically with Alexander. Some 150 Partners Outdoors convened most recently January 13-16. The group included representatives of state parks, the recreation industry and federal land managers, including Dale Hall, director of the Fish and Wildlife Service. Assistant Secretary of Interior Lyle Laverty also attended.

In the last go-round private property rights groups brought a lawsuit for violating the Federal Advisory Committee Act and then Secretary of Interior Don Hodel postponed printing of a final report. The Island Press publishing company eventually printed the report.

In addition the Reagan administration established a task force that came up with a very different report on outdoors policy than PCAO submitted. The 1987 Reagan report, *Outdoor Recreation in a Nation of Communities*, did not include a recommendation for a dedicated trust. Instead it recommended a combination of strategies for protecting land including private funding, land exchanges and protection of private property.

Private property groups, led by the American Land Rights Association, have said they would object to a new commission

Alexander's recommendation for a new PCAO emerges at a pivotal time for national outdoor policy. A new Democratic Congress is in power and a key House member is talking about a revived guaranteed conservation spending initiative.

If the initiative from Rep. Norman Dicks (D-Wash.) follows the course of a predecessor trust from 2000, it would operate as a version of the PCAO trust recommendation. Dicks, chairman of the House subcommittee on Interior Appropriations, has protested that conservation spending in the real world has decreased by 1.2 percent in the last five years.

Alexander himself last year helped push through Congress a new law that will send .125 percent of new oil and gas royalties from the Gulf of Mexico to the state side of LWCF. President Bush on Dec. 20, 2006, signed an energy law (PL 109-432) that will allocate about \$150 million from those royalties to the state side program over the next 15 years.

But Front from the Trust for Public Lands said, "From my perspective

it's always gratifying and exciting when leaders like Alexander pick up the cudgel. It's always a good time to act."

Kempthorne lauds state LWCF program in annual report

Secretary of Interior Dirk Kempthorne is giving high praise to a beleaguered state and local recreation grants program administered by the Park Service. But that praise is no guarantee of substantial funding.

In introducing a report on the fiscal year 2007 accomplishments of the state side of the Land and Water Conservation Fund (LWCF) Kempthorne said:

"At Interior, we are striving to assure a future for our children, grandchildren and their children in which they can listen to crickets chirping or see a fox scamper across a field. The Land and Water Conservation Fund is fundamental to achieving this goal by helping to provide these special places where families and children can reconnect with nature and with each other."

Despite Kempthorne's praise, the Bush administration in fiscal year 2008 requested no money for state LWCF grants. The Interior budget was prepared under Kempthorne's supervision. Nonetheless, Congress approved \$25 million in a fiscal 2008 appropriations bill (PL 110-161 of Dec. 26, 2007.) The fiscal 2007 appropriation was \$30 million.

The chief of the NPS state and local assistance program, Michael Wilson, is realistic. "It's of some comfort to have support at the top," he said. "But I recognize there is competition and that the Secretary and Congress must balance priorities. There just isn't enough money to go around. We stand in line and hope there will be support."

The new report details program accomplishments in fiscal 2007, including the use of prior year money as well as fiscal 2007 money. The report responds in part to past criticisms from

the Office of Management and Budget (OMB.)

OMB came close to killing the program in 2003 when it issued a devastating report prepared under a government-wide analysis of all federal agency programs called PART (Program Assessment Rating Tool.) OMB said the state-side program hadn't justified its existence.

"Strategic planning is weak, with no long-term or annual performance measures. States do not provide performance information, even though NPS has the statutory authority to require such data," OMB said at the time. "Program results have not been demonstrated. NPS will have to coordinate with States to establish appropriate performance measures and reporting requirements." On a scale of zero to 100 OMB gave the program a zero for accountability.

The fiscal 2007 report from NPS details program accomplishments. It says the state grants program created 19 new parks, made 21,140 acres of parks available for the public and developed new facilities on 173 parks.

The report also includes estimates of needs from states of \$15.6 billion. Wilson said the needs are not just from state grants but also from other sources of money, such as bonds, lotteries, general funds, etc. The State of Florida expressed the greatest need at \$8.3 billion, followed by California at \$1.7 billion.

NPS doesn't provide guidance for states to follow in categorizing their estimated needs. It simply accepts the states' recommendations, Wilson said.

An alliance of conservation spending program supporters from environmental groups and the human-powered recreation industry asked Congress for a fiscal 2008 appropriation of \$100 million for the state side of LWCF.

As farm bill nears conference money becomes a major issue

When the House and Senate begin a conference committee on a multi-year

farm bill - soon, maybe - they must make several major policy decisions that are crucial to conservation programs.

Of great importance the conferees must decide how to pay for conservation programs - from regular farm bill allocations per the House or from tax credits for those programs per the Senate. In this battle the White House is siding with the House on strategy, if not in dollars.

But the White House disagrees with the bottom line funding in each bill, so much so that the Office of Management and Budget has threatened a veto if Congress spends too much money on the legislation (HR 2419.)

With such seemingly intractable disputes to resolve, the possibility is quite good that Congress will fail to complete a farm bill in 2008 and will simply extend the existing law for another year.

That would distress a coalition of conservation groups called the Agriculture and Wildlife Working Group (AWWG.) The coalition is counting on HR 2419 to provide at least \$4 billion more for conservation programs (over five years) than under the existing farm bill.

Said AWWG, "Regardless of the outcome on funding methods, the AWWG would strongly oppose any efforts to reduce funding level increases below the threshold amount of \$4 billion in the Senate bill and strongly urge the conference committee to work towards an increase of the \$4.5 billion provided in the House bill or greater."

Added AWWG, "This amount would serve to advance further meaningful improvements to fish and wildlife habitat and establish conservation as a top-tier priority in the Farm Bill."

AWWG made its wishes known to Congressional leaders in a letter January 17 calling for support for conservation programs. "As you know, the Farm Bill represents the single largest federal investment in conservation on private lands and is critical to maintaining healthy fish and wildlife habitat,

soil and water quality, and recreational opportunities for America's 34 million sportsmen/-women," the groups wrote.

Making up AWWG are the American Sportfishing Association, Association of Fish and Wildlife Agencies, Ducks Unlimited, the Izaak Walton League of America, the Max McGraw Wildlife Foundation, National Wildlife Federation, Pheasants Forever, Quail Forever, Quail Unlimited, Theodore Roosevelt Conservation Partnership, Trout Unlimited and The Wildlife Society.

But first things first. The House and Senate must name conferees before discussions can begin. That is complicated this year because the Senate Finance Committee played a key role in developing the financial provisions in HR 4219. So instead of just Senate agriculture policy experts the conference must also include Senate money experts as well.

The Senate returned to work this week from a holiday recess and that sets up the possibility that conferees would be named soon. House and Senate Agriculture Committee leaders reportedly want to wrap up a bill by early February. But most observers believe early March is a more realistic deadline. If that deadline is missed, Congress will by then have shifted its attention to writing a budget and appropriations bills. And the farm bill may have to wait for the next Congress in 2009.

It is understood staff members from the House and Senate Agriculture Committees have been at work for weeks trying to resolve differences between the House and Senate, except for the great policy disputes. It is also understood that House and Senate leaders have consulted with each other on the big policy disputes, as well as with the Bush administration.

To form its version of HR 2419 the Senate combined the recommendations of two committees - Agriculture and Finance. The agriculture committee provided the details of programs and the finance committee provided money to pay for them.

Past iterations of farm bills (each one usually covers five years) have removed millions of acres of open land from farming and devoted them to conservation purposes, preserving wildlife habitat across the country.

The version of HR 2419 approved by the Senate included basic conservation programs such as a conservation reserve program, a wildlife habitat improvement program, a wetlands reserve program, a grasslands reserve program, and an environmental quality incentives program. It also includes a new program to encourage private landowners to open their property to hunters and fishermen.

The House approved its version of HR 2419 July 27. It also included most of the conservation programs advocated by hunters and fishermen, including the private landowner program.

Non-power rec users organize on FS roadless policy

Human-powered recreation groups have formed a coalition to campaign for protection of roadless areas in national forests in Idaho and Colorado.

The groups fear the Forest Service will allow increased road building and other activities in that portion of the states' forests that lie between wilderness mountains and heavily roaded lowlands.

On the table are petitions from the governors of the two states that would modify a Clinton administration ban against most road construction in 58.5 million acres of roadless areas in the national forests. "Our concern is there isn't much undeveloped land area left for recreation and these proposals are starting to nibble away at the edges," said Thomas O'Keefe, Pacific Northwest stewardship director for American Whitewater.

O'Keefe, who is also the leader of an Outdoor Alliance roadless protection campaign, sees the situation this way: "On the ground approximately 50 percent of Forest Service land is available for

resource use. A little less than 20 percent is protected as wilderness but most of that land is remote mountain - rock and ice. Then there is the remaining 30 percent that we think holds some of the highest values for recreation with nearby access."

The Outdoor Alliance includes the Access Fund, American Canoe Association, American Hiking Society, American Whitewater, International Mountain Bicycling Association and Winter Wildlands Alliance.

Idaho and Colorado petitioned the Forest Service for state-specific rules to manage roadless national forest lands. While a federal court has blocked the Bush administration policy establishing the petition procedure, the administration continues to process petitions under the Administrative Procedures Act.

On January 7 the Forest Service published a draft rule that would implement an Idaho petition and allow some road construction and timber harvesting in national forest roadless areas in the state. Idaho Gov. C. L. "Butch" Otter asked the feds to open up somewhat 9.3 million acres of roadless areas within 10 national forests.

The proposed rule would allocate 1.3 million acres to wild land recreation (the petition called for 1.4 million acres), 1.7 million acres to primitive use (the same as the petition), 5.3 million acres to backcountry (the petition called for 5.5 million acres) and 600,000 acres to general forest use (the petition called for a half-million acres.)

Separately, the Forest Service gave notice December 26 that it would prepare an EIS and rule to implement a Colorado roadless area petition. The Colorado petition would allow slightly more road construction than the Clinton rule t, but in carefully drawn circumstances.

The Colorado petition was submitted by former Gov. Bill Owens (R) and modified by current Gov. Bill Ritter

(D.) The petition would exempt approximately 300,000 acres of the 4.4 million acres of roadless national forest in Colorado from the Clinton rule.

Five governors have gone in a different direction from Idaho and Colorado and asked the Department of Agriculture to protect national forest roadless areas in their states from road construction. They are California, New Mexico, North Carolina, South Carolina and Virginia.

The Forest Service is taking public comment on the Idaho petition until April 7 and on the Colorado petition until March 26. More information on both petitions is available at <http://roadless.fs.fed.us>.

Major case dropped, but Utah RS 2477 debate continues

The State of Utah obtained dismissal from a federal court last month of a claim it had filed to obtain six RS 2477 rights-of-way (ROWS) across Bureau of Land Management (BLM) land.

But the dismissal did little to ease the hard feelings between the state and environmentalists over other possible RS 2477 claims in the state.

Environmentalists accuse the state of attempting to gain possession of ROWs across the most sensitive BLM lands in Utah. "Our concern is the State of Utah is going after the most damaging claims - near Canyonlands National Park, high alpine wilderness, fragile desert wilderness," said Ted Zukoski, an attorney for Earthjustice. "We're pleased they have dropped this case. It appears to be focused not on transportation but on wild lands."

Countered Roger R. Fairbanks, assistant attorney general for the state, "These are straight transportation routes. We don't consider these environmentally sensitive lands. They are graded on an annual or biannual basis."

In the case at hand the State of

Utah, backed by six counties, filed a lawsuit in federal court on Feb. 9, 2005, to claim six ways across BLM-managed land as RS 2477 ROWs. The state filed the claims under the Quiet Title Act. The case is cited as *State of Utah et al. v. U.S.*, 2:05CV00108, DAK of Feb. 9, 2005.

The lawsuit was filed before the Tenth U.S. Circuit Court of Appeals issued a landmark RS 2477 decision on Sept. 9, 2005. That decision, *Southern Utah Wilderness Alliance v. BLM*, Nos. 04-4071 & 04-4073 of Sept. 9, 2005, said that BLM could not adjudicate the validity of RS 2477 ROW assertions, only a federal court could. So the state had followed the decision's direction by filing its claim in federal court.

Said Utah's Fairbanks, "When we filed before (the circuit court decision), we said 'Let's get some (ROWs) settled where the evidence is overwhelming.' We thought we were picking some roads that were like shooting fish in a barrel."

Fairbanks said Utah gave up on the litigation because it believes it can settle out of court. "We think the counties and the federal government can work out their differences," he said.

The dismissal action of December 14 revealed little. In one sentence the parties said, "Pursuant to Rule 41(a)(1)(ii) of the Federal Rules of Civil Procedure, counsel for plaintiffs, Roger R. Fairbanks, counsel for defendants, Thomas K. Snodgrass, and counsel for proposed intervenor-defendants, Edward Zukoski, hereby stipulate and agree to dismissal of the above-referenced action, without prejudice, with the parties to bear their own fees and costs."

This is not the only RS 2477 litigation in play in Utah. On Oct. 2, 2007, the Tenth Circuit ruled that environmental groups may not intervene in an RS 2477 right-of-way (ROW) court case as long as the federal government is adequately arguing the case in their favor. However, district judges may grant intervention if they determine the feds

are not fighting for the environmentalists.

The en banc Tenth Circuit decision is important because it sets an immediate precedent for a half-dozen Quiet Title cases that are already before the courts in Utah and to many thousands of additional claims Utah counties are expected to file to obtain RS 2477 ROWs.

With new rule near feds give up on FS planning appeal

The Bush administration has ended its appeal of a federal court order to prepare an EIS to cover comprehensive national forest planning rules.

The administration had appealed a March 30, 2007, decision requiring the EIS that was handed down by U.S. District Court Judge Phyllis J. Hamilton in Northern California. But on January 7 the administration notified the Ninth Circuit Court of Appeals it was giving up the appeal.

The on-the-ground impacts of the administration decision not to continue the appeal may be inconsequential. That's because the Forest Service is closing in on a new rule.

"That's right," said a Forest Service spokesman. "We're very close to taking action within the next week or so."

The agency proposed a new planning rule Aug. 24, 2007, that is essentially unchanged from the litigated 2005 rule. The only change would be the writing of an EIS, expected to be completed shortly, to back the rule, as Hamilton ordered.

Environmentalists objected to the original 2005 Forest Service rule for a raft of reasons, including the removal of a prior requirement that an EIS be written to cover individual forest plans. The environmentalists also demanded that the administration write a programmatic EIS to cover the rule.

The Forest Service issued the Bush

administration national forest planning rule on Jan. 5, 2005. The 2005 rule and proposed 2007 rule are designed to give the 155 national forests guidance in writing land use plans that last for a decade or more.

The 2005 rule was particularly controversial because it exempted forests from preparing an EIS for their plans. The service argued that plans don't authorize any specific activities that require environmental analysis; that can be done later when specific projects are proposed, such as for expansion of a ski resort.

In the substance of the 2005 rule the Forest Service reversed several major thrusts of Clinton administration rules of Nov. 9, 2000 (which the Bush administration suspended on May 17, 2001.) In one, the Bush rule effectively eliminated "ecological sustainability" as the paramount goal of national forest management. Instead, the service said it would balance protection of the environment against economic and social values.

On behalf of a coalition of environmental groups the law firm Earthjustice objected to the 2005 rule, arguing among other things that the Forest Service had failed to prepare a programmatic EIS on the overall impact of the planning rule.

Judge Hamilton agreed and blocked the 2005 planning rule on the crucial point of NEPA documentation. She said NEPA does call for preparation of environmental documentation for program rules, as do Council on Environmental Quality regulations. The administration had argued its rule did not prescribe on-the-ground changes but simply laid out a planning strategy. Therefore, NEPA analysis was not required.

Although the Bush administration appealed Hamilton's decision to the circuit court, it also proposed a replacement rule on Aug. 24, 2007, and prepared an EIS. The Forest Service offered minimal new environmental analysis in its proposal, concluding that all alternatives would "result in similar resource protection."

That offended House Democrats. They prepared a letter to Undersecretary of Agriculture Mark Rey that said, "This is decidedly not NEPA analysis, but at best wishful thinking." House Natural Resources Committee Chairman Nick Joe Rahall (D-W.Va.) was the lead signatory.

The administration posted notice that it was dropping its appeal in a January 7 motion to the circuit court. It said, "Following internal review, USDA has decided not to pursue its appeals. In light of the federal government's decision AFPA/AFRC has likewise decided not to pursue their appeals." AFPA is the American Forest & Paper Association and AFRC is the American Forest Resource Council. Those industry associations had filed parallel appeals to the Ninth Circuit.

Notes

Everglades Coalition asks money.

The Everglades Coalition of conservation groups at its annual conference earlier this month asked Congress to start putting up serious money to restore the Everglades ecosystem. The coalition said the federal government took a major step toward restoration November 9 when President Bush signed into law a new Water Resources Development Act, PL 110-114 of Nov. 8, 2007. It authorizes \$900 million in two projects to begin the spadework on a \$7.8 billion Comprehensive Everglades Restoration Project. But now, said the coalition of environmental groups, it's time for Congress to appropriate money to carry out the authorized projects. The groups, including the National Parks Conservation Association, are asking for an Everglades restoration appropriation of \$370 million in the fiscal year 2009 budget. The Bush administration will unveil its budget request February 4. "The Coalition recognizes the commitment from Congress to Everglades restoration," said April Gromnicki, a National Audubon Society staff member. "Now we need the federal government to appropriate construction dollars to see actual progress made on restoration projects." Speakers at the conference included Florida Gov. Charlie Crist (R), Sen. Bill Nelson (D-Fla.), Deputy Secretary of Interior Lynn Scarlett, and five Congressmen.

Enviros file power corridor suit.

Eleven environmental groups filed suit January 14 against a Department of Energy (DoE) decision to locate an electric transmission corridor in eight eastern states. Separately, the Center for Biological Diversity filed suit January 10 against a second DoE decision to locate an electric transmission corridor in Arizona and southern California. Although DoE approved the corridors per orders of Congress in an Energy Policy Act of 2005, the plaintiffs argued that DoE still was required to prepare an environmental review before making its decisions. Under its decisions applicants for rights-of-way (ROWs) through the corridors could obtain eminent domain authority from the feds even if states denied applications, thus expediting the location of electricity ROWs in high-use areas. The eastern corridor traverses parts of Delaware, the District of Columbia, Maryland, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia. The plaintiffs, including the Piedmont Environmental Council and the National Wildlife Federation, said the ROWs could harm the Upper Delaware Scenic and Recreational River, Antietam National Battlefield and Gettysburg National Military Park. The southwestern corridor traverses seven counties in southern California and three counties in western Arizona.

Gov. Island plan comments asked.

The Park Service said January 16 it will take public comment on a draft management plan that anticipates a \$400 million park will be built on Governors Island in New York Harbor just off the southern tip of Manhattan Island. As we reported in the last issue of *FPR*, the state and city of New York have chosen a company to design the park. The architectural firm known as West 8 proposed a plan for the 172-acre island consisting of a new 40-acre-park on the southern end, a two-mile bikeway (with free bikes available to the public) around the circumference, and major renovations to open space on the northern end. Plans call for completion of the park and rec facilities by 2012. On January 16 the Park Service said it would take public comment through March 16 on its draft

plan and EIS for the island that incorporates the West 8 proposal. Comment on the NPS plan/EIS to: *Superintendent Linda Neal, Governors Island National Monument, Battery Maritime Building, Slip 7, 10 South St., New York, NY 10004.* More information is available at <http://www.govisland.com>.

FS reorganization denied.

The Bush administration says a report that the Forest Service is about to implement a major reorganization of its environmental review functions is untrue. The environmental group Public Employees for Environmental Responsibility (PEER) said January 14 that the service intends to consolidate most environmental review functions in six centers around the country, removing responsibilities from field offices. Collection of environmental data would remain on the ground. But Under Secretary of Agriculture Mark Rey told us this week no such action is being contemplated. "I don't think that's going to happen," he said. "I don't think we found anything in the way of savings that would justify doing it. We're not going to do that." According to PEER the consolidation would eliminate thousands of jobs and save \$250 million. PEER opposes the idea. PEER based its statement that the reorganization was imminent on (1) a NEPA Feasibility Study Team report of July 10, 2007, (2) praise for the study by Forest Service Chief Abigail Kimbell in a Sept. 21, 2007, memo and (3) an increase in agency E-mail traffic. The Bush administration is campaigning for major reductions in the Forest Service budget because of the huge cost of fire fighting in recent years. To that end the service has undertaken a number of reorganization reviews.

Will fire money run FS again?

Friends of the Forest Service fear that at some point huge drawdowns from the budget for fire fighting in fiscal year 2009 will catch up with the agency and Congress will be forced to slash operations budgets. George Leonard, chairman of the board of the National Association of Forest Service Retirees, told *FPR*, "Looking ahead in the formulation of the 2009 budget request the administration will (probably) ask the Forest Service

to eat an increase in fire spending so the agency won't have the ability to reflect the priorities it would like to see." There is of course no sure way to estimate the severity of the upcoming fire season, either in terms of acreage burned or costs. But for the sake of budgeting the administration is expected to base its fire-fighting request on the average costs of the last 10 years. Because the last few fire years have been increasingly expensive the 10-year average is skyrocketing. That means the administration will ask for even more money than in fiscal 2009. In fiscal 2008 the Bush administration recommended both substantial fire appropriations as well as a seven percent reduction in National Forest System appropriations. It asked Congress to decrease forest system spending by \$121 million, from \$1.465 billion in a fiscal 2007 request to \$1.344 billion in fiscal 2008. Congressional appropriators didn't go along. Instead they provided a significant \$148 million more for the National Forest System than the administration requested in a final appropriation of \$1.493 billion.

James to head NPS concessions board. Secretary of Interior Dirk Kempthorne has selected hospitality industry consultant Clay James to head the National Park Service Concessions Management Advisory Board. The seven-member board, established in 1998, advises NPS on concessions policy and programs. Board members represent a wide range of interests that are involved with concessions management in the parks. James has broad experience in the hospitality field, having served as president of the Vail Resorts-Grand Teton Lodge Company in the past. Kempthorne also renewed appointments to the board of Dr. James J. Eyster, a finance professor at Cornell University; Richard Linford, co-owner of ECHO: The Wilderness Company; and Ramona Sakiestewa, a Hopi weaver.

Poll said to support water bill. House Transportation Committee Chairman James Oberstar (D-Minn.) said a new poll on clean water issues argues for the enactment of legislation to require permits for activities in all water

bodies. The poll was conducted of rural residents by Bellwether Research & Consulting for the Earthjustice environmental law firm. It concluded that 55 percent of voters in three Congressional districts want to keep water free from pollution. That includes pollution to "isolated" water bodies, said Earthjustice. Oberstar has introduced legislation (HR 2421) that would make clear that the Corps of Engineers should require a permit for all water bodies, not just navigable water bodies. The Supreme Court held June 19, 2006, in the landmark decision, *Rapanos v. U.S.* Nos. 04-1034 and 04-1384, that the Clean Water Act requires a permit only for navigable waters. The poll is available at <http://www.earthjustice.org/cleanwaterpoll>.

FS backs roadless OHV trail. A Forest Service appeals officer ruled earlier this month that an off-highway vehicle (OHV) route in a national forest roadless area may remain open to OHV use. The ruling reverses a finding of the Six Rivers National Forest that 14 miles of historic OHV trails should be closed because the trails were in roadless areas. The appeals decision says that a 2001 Clinton administration roadless rule closed roads but not trails. "The Rule is silent to motorized trails," said the appeal decision by Eldorado National Forest District Ranger Patricia Trimble, the reviewing officer. "In the strictest terms the Roadless Rule is not a justification for eliminating motorized trails in the absence of any additional rationale in the (environmental analysis.)" The BlueRibbon Coalition and Del Norte County appealed the original Sept. 21, 2007, decision of the Six Rivers National Forest District Ranger ordering 14 miles of trails closed in the Smith River National Recreation Area. Said Don Amador, western representative for the BlueRibbon Coalition, "This decision clearly supports BRC's continuing legal viewpoint that the 2001 Clinton Roadless Rule allows for motorized trails to be designated in roadless areas." The appeal decision is available at: <http://www.sharetrails.org/files/SmithRiverNraBrcAppealDecisionJan14.pdf>.

Boxscore of Legislation

<u>LEGISLATION</u>	<u>STATUS</u>	<u>COMMENT</u>
Appropriations 2008 (Interior)		
HR 2643 (Dicks)	President Bush signed into law Dec. 26 as PL 110-161	Increases park and rec spending across-the-board, despite veto threat.
Appropriations 2008 (Energy & Water)		
HR 2641 (Visclosky)	President Bush signed into law Dec. 26 as PL 110-161	Increases Corp of Engineers and Bureau of Reclamation spending.
Appropriations 2008 (Transportation)		
HR 3074 (Olver)	President Bush signed into law Dec. 26 as PL 110-161	Provides full funding for park are rec programs, as called for by SAFETEA-LU.
NPS Centennial Challenge		
S 1253 (Bingaman)	House and Senate hearings	S 1253 and HR 2959 would establish
HR 2959 (Rod Bishop)	August 2.	\$2 billion program to help the parks.
HR 3994 (Rahall)		Rahall would impose new DOI fees.
NPS tax assistance		
HR 1731 (Baird)	Baird introduced March 28.	Would authorize NPS improvement fund financed by income tax check-off.
FLREA repeal		
S 2438 (Baucus)	Baucus introduced December 10.	Would repeal most of 2004 federal agency recreation fee law.
Heritage areas national		
S 278 (Thomas)	Senate committee approved	Would establish national standards
HR 1483 (Regula)	July 25. House approved October 25.	for new NHA designations. HR 1483 Would designate six new NHAs.
Farm bill		
HR 2419 (Peterson)	Senate committee approved October 25. House approved July 27.	Would authorize major conservation programs for five years, including new Open Fields program.
Conservation tax credits		
S 469 (Baucus)	Senate committee approved	Would make semi-permanent conservation
HR 1576 (Thompson)	September 20. Thompson introduced March 19.	tax credits Congress approved last year.
Wildlife conservation grants		
HR 3221 (Pelosi)	House approved August 4.	Both would make grant program permanent,
HR 2338 (Dicks)	Dicks introduced May 16.	open way for new source(s) of money.
American Discovery Trail/National Discovery Trails		
HR 74 (Bartlett)	Bartlett introduced Jan. 4.	Would designate an American Discovery Trail and discovery trail system.
Trail acquisition authority		
S 169 (Allard)	Allard introduced January 4.	Would authorize land acquisition
HR 1847 (M Udall)	Udall introduced March 29.	authority for nine national trails.
Trail expansion authority		
S 169 (Allard)	Hatch introduced Feb. 14.	Would authorize route variations for four national historic trails.
Arizona trail		
S 1304 McCain	Senate hearing Sept. 11.	Would designate 807-mile trail from
HR 2297 (Giffords)	Giffords introduced May 14.	bottom to top of Arizona.
NLCS for Bureau of Land Management		
HR 2016 (Grijalva)	Senate committee approved May	Would give Congressional blessing
S 1139 (Bingaman)	23. House hearing May 24.	to national conservation system.
Rim of the Valley (SMMNRA)		
S 1053 (Feinstein)	House approved December 4 in	Would authorize a study of a
HR 1835 (Schiff)	omnibus bill, HR 3998.	major expansion of SMMNRA.